IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Review Petition Stamp No.10042 of 2005
in
Writ Petition No. 5607 of 1996

Ulhasnagar Cooperative Industrial
Society Limited ..Petitioner

vs.

1. Union of India and ors. ..Respondents.

Shri S.G.Page with Shri A.C.Sarkate for petitioner
Shri R.C.Master i/b Shri S.S.Sarkar for respondent nos. 1 and 2
Shri G.S.Godbole for respondent no.4.

CORAM: A.P.SHAH &
S.C.DHARMADHIKARI JJ.
5th May, 2005

P.C.

1. Heard Counsel appearing for the parties.

2. The petitioner is a Cooperative Society registered under the Maharashtra Cooperative Societies Act, 1960 and has been classified as an Industrial Society. On 24th January, 1994 an advertisement was published by respondent no.4 Indian Oil Corporation inviting applications for award of Dealership of Kerosene/LDO for Palghar, District Thane. The petitioner Society submitted its application along with requisite documents for award of dealership for Kerosene/LDO for Palghar, District Thane. It appears that the Oil Selection Board displayed the result sheet on the notice board declaring the names of the candidates

selected for award of various dealerships. The name of the petitioner was included in the said list. Inspite of waiting for considerable time and inspite of reminders to respondent no.4 necessary Letter of Intent was not issued to the petitioner Society. The petitioner Society, therefore, filed a writ petition in this Court being Writ Petition No.3246 of 1996 praying that Indian Oil Corporation be directed to issue the Letter of Intent to the petitioner Society. This writ petition was disposed on 2nd September, 1996 in terms of the minutes of order tendered by the parties. Union of India was directed to take a decision in regard to issuance of Letter of Intent to the petitioner Society for SKO/LDO dealership within a period of four weeks.

3. Respondent No. 2 vide its letter dated 3rd October, 1996 has advised Indian Oil Corporation as under:

> "Under the Ministry’s guidelines, the OSBs are supporting to finalize merit panels within 24 hours after the conclusion of the interviews for a particular location and the name is tobe sent to the concerned Oil Company within two days thereafter.

> It is not noticed that in the case of OSB (Maharashtra), the time schedule has not been adhered to, under the circumstances, the Government has decided against the release of the merit panels by OSB (Maharashtra) as they were issued beyond the stipulated period and are not in accordance with the guidelines."

4. The legality and validity of the above communication dated 3rd October, 1996 was challenged by the petitioner in present writ petition. When this writ petition was placed for hearing the learned Counsel appearing for respondent no.4 stated that the impugned communication was issued on the basis of the policy decision taken on finalisation of the merit panel in a given time frame. The learned Counsel submitted that during the pendency of the petition neither any Letter of Intent was issued to the petitioner nor it has been awarded dealership. The petitioner having not been permitted to operate the dealership and it being only empanelled, it has no right to seek mandatory directions and orders from this Court. He further pointed out that it will always be open for the petitioner to apply if fresh advertisement is issued and merely because Letter of Intent was not awarded earlier it would not

constitute a bar in so applying and the application being considered. In the light of the submissions made by the learned Counsel appearing for respondent no.4 Indian Oil Corporation, the Division Bench held that since there is no concluded contract nor any right created in favour of the petitioner merely because of empanellment, the issue raised in the petition need not be examined and it will be open for the petitioner to apply in case fresh advertisement is issued by respondent no.4 and in case such advertisement is issued and the petitioner applies its application will be considered on its own merits and in accordance with law and refusal on the part of the Court to go into the rival contentions will not be an impediment for the petitioner to apply or respondent no.4 to consider the same. The petition was accordingly disposed of.

5. By this Civil Application the petitioner is seeking review of order dated 26th October, 2004. Shri Page, learned Counsel appearing for the petitioner, brought to our notice that the Letter of Intent has been issued on 7th March, 1999 in favour of the petitioner and the petitioner has given its consent to the offer made by Indian Oil Corporation for the dealership of SKO/LDO at Palghar District Thane subject to the terms and

conditions as have been set out by Indian Oil Corporation. Thereafter on 7th June, 1999, respondent no.4 issued the Letter of Intent of appointment in favour of the petitioner informing the petitioner that the petitioner has been appointed as SKO/LDO dealer on the terms and conditions contained in the dealership agreement which is to be executed forthwith. The petitioner, therefore, signed and executed the dealership agreement on 8th June, 1999 with respondent no.4 and came to be appointed as dealer of respondent no.4. Shri Page submitted that the petitioner's counsel was not aware of the aforesaid developments which had taken place during the pendency of the writ petition. The Counsel appearing for respondent no.4 also fairly stated that he was not aware of that the petitioner has been already granted the dealership during the pendency of the writ petition. In view of the fact that the petitioner was already awarded dealership there is no question of issuing a fresh advertisement and the petitioner making a fresh application for award of dealership. It appears that both the learned Counsel did not receive instructions about grant of dealership in favour of the petitioner. In these circumstances, the order dated 26th October, 2004 is recalled and the writ petition is restored to file. Writ petition be placed before the

appropriate bench for hearing and disposal.